House of Representatives

File No. 693

General Assembly

February Session, 2000

(Reprint of File No. 459)

Substitute House Bill No. 5107
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 29, 2000

An Act Implementing The Recommendations Of The Blue Ribbon Commission To Study Affordable Housing Regarding The Affordable Housing Appeals Procedure.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 8-30g of the general statutes, as amended by section 1 of public act 99-261, is repealed and the following is substituted in lieu thereof:

(a) As used in this section:

[(1) "Affordable housing development" means a proposed housing development (A) which is assisted housing**,** or (B) in which not less than twenty-five per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less

than ten per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the area median income or sixty per cent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the area median income or eighty per cent of the state median income, whichever is less**]**

(1) "Affordable housing development" means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

(2) **[**"affordable housing application"**]** "Affordable housing application" means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing;

(3) **[**"assisted housing"**]** "Assisted housing" means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code;

(4) **[**"commission"**]** "Commission" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority; **[**and**]**

(5) **[**"municipality"**]** "Municipality" means any town, city or borough, whether consolidated or unconsolidated;

(6) "Set-aside development" means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed

development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income;

(7) "Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development; and

(8) "Commissioner" means the Commissioner of Economic and Community Development.

(b) (1) Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A) Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning

regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

(2) The commissioner shall, within available appropriations, adopt regulations pursuant to chapter 54 regarding the affordability plan. Such regulations may include additional criteria for preparing an affordability plan and shall include: (A) A formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices; (B) a clarification of the costs that are to be included when calculating maximum allowed rents and sale prices; (C) a clarification as to how family size and bedroom counts are to be equated in establishing maximum rental and sale prices for the affordable units; and (D) a listing of the considerations to be included in the computation of income under this section.

(c) Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply.

(d) For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred per cent of the Section 8 fair market rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban

Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

(e) For any affordable dwelling unit that is rented in order to comply with the requirements of a set-aside development, no person shall impose on a prospective tenant who is receiving governmental rental assistance a maximum percentage-of-income-for-housing requirement that is more restrictive than the requirement, if any, imposed by such governmental assistance program.

[(b)**]** (f) Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units **[**, specified in subparagraph (B) of subdivision (1) of subsection (a) of this section, contained in the affordable housing development**]** in a set-aside development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in section 8-8, as amended by section 5 of public act 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals, including pretrial motions, shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges, sitting in geographically diverse parts of the state, so that a consistent body of expertise can be developed. Unless otherwise ordered by the Chief Court Administrator, such appeals, including pretrial motions, shall be heard by such assigned judges in the judicial district in which such judge is sitting. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said

section 8-8, as amended by section 5 of public act 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable.

[(c)**]** (g) Upon an appeal taken under subsection **[**(b)**]** (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that **[**(1) (A)**]** the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. **[**; (B)**]** The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; **[**(C)**]** (B) such public interests clearly outweigh the need for affordable housing; and **[**(D)**]** (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses, and (B) the development is not assisted housing, as defined in subsection (a) of this section. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

[(d)**]** (h) Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The day of receipt of such a modification shall be determined in the same manner as the day of receipt is determined for an original application. The filing of such a

proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. [The commission may hold a public hearing and shall render a decision on the proposed modification within forty-five days of the receipt of such proposed modification.] The commission shall hold a public hearing on the proposed modification if it held a public hearing on the original application and may hold a public hearing on the proposed modification if it did not hold a public hearing on the original application. The commission shall render a decision on the proposed modification not later than sixty-five days after the receipt of such proposed modification, provided, if, in connection with a modification submitted under this subsection, the applicant applies for a permit for an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, as amended, and the time for a decision by the commission on such modification under this subsection would lapse prior to the thirty-fifth day after a decision by an inland wetlands and watercourses agency, the time period for decision by the commission on the modification under this subsection shall be extended to thirty-five days after the decision of such agency. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said [forty-five days] sixty-five days or subsequent extension period permitted by this subsection shall constitute a rejection of the proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in section 8-8, as amended by section 5 of public act 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

[(e)] (i) Nothing in this section shall be deemed to preclude any right of appeal under the provisions of section 8-8, as amended by section 5

of public act 99-238, 8-9, 8-28, 8-30 or 8-30a.

(j) A commission or its designated authority shall have, with respect to compliance of an affordable housing development with the provisions of this chapter, the same powers and remedies provided to commissions by section 8-12.

[(f)**]** (k) Notwithstanding the provisions of subsections (a) to **[**(e)**]** (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a municipality in which at least ten per cent of all dwelling units in the municipality are (1) assisted housing or (2) currently financed by Connecticut Housing Finance Authority mortgages or (3) subject to deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as **[**affordable housing, as defined in section 8-39a, for persons and families whose**]** housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the **[**area**]** median income. The Commissioner of Economic and Community Development shall, pursuant to regulations adopted under the provisions of chapter 54, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually. For the purpose of determining the percentage required by this subsection, the commissioner shall use as the denominator the number of dwelling units in the municipality, as reported in the most recent United States decennial census.

[(g) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, the affordable housing appeals procedure shall not be applicable to an affordable housing application filed with a commission during the one-year period after a certification of affordable housing project completion issued by the Commissioner of Economic and Community Development is published in the Connecticut Law Journal. The Commissioner of Economic and

Community Development shall issue a certification of affordable housing project completion for the purposes of this subsection upon finding that (1) the municipality has completed an initial eligible housing development or developments pursuant to section 8-336f or sections 8-386 and 8-387 which create affordable dwelling units equal to at least one per cent of all dwelling units in the municipality and (2) the municipality is actively involved in the Connecticut housing partnership program or the regional fair housing compact pilot program under said sections. The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after such one-year period, except as otherwise provided in subsection (f) of this section.**]**

(l) (1) Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall be the three-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection.

(2) Notwithstanding the provisions of this subsection, such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

(4) (A) The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points.

(B) A municipality may apply for a certificate of affordable housing project completion pursuant to this subsection by applying in writing to the commissioner, and including documentation showing that the municipality has accumulated the required number of points within the applicable time period. Such documentation shall include the location of each dwelling unit being counted, the number of points each dwelling unit has been assigned, and the reason, pursuant to this subsection, for assigning such points to such dwelling unit. Upon receipt of such application, the commissioner shall promptly cause a notice of the filing of the application to be published in the Connecticut Law Journal, stating that public comment on such application shall be accepted by the commissioner for a period of thirty days after the publication of such notice. Not later than ninety days after the receipt of such application, the commissioner shall either approve or reject such application. Such approval or rejection shall be accompanied by a written statement of the reasons for approval or rejection, pursuant to the provisions of this subsection. If the application is approved, the commissioner shall promptly cause a certificate of affordable housing project completion to be published in the Connecticut Law Journal. If the commissioner fails to either approve or reject the application within such ninety-day period, such application shall be deemed provisionally approved, and the municipality may cause notice of such provisional approval to be published in a conspicuous manner in a daily newspaper having general circulation in the municipality, in which case, such moratorium shall take effect upon such publication. The municipality shall send a copy of such notice to the commissioner. Such provisional approval shall remain in effect unless the

commissioner subsequently acts upon and rejects the application, in which case the moratorium shall terminate upon notice to the municipality by the commissioner.

(5) For purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age and "family units" are dwelling units whose occupancy is not restricted by age.

(6) For purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows: (A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income is equal to or less than eighty per cent of median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each. (B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit. (C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit. (D) Family units restricted to persons and families whose income is equal to or less than forty per cent of median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit. (E) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one-half point. (F) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995.

(7) Points shall be awarded only for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or

restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty per cent of median income.

(8) Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.

(9) A newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy. A newly-restricted unit shall be counted toward a moratorium when its deed restriction takes effect.

(10) The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after a three-year moratorium expires, except (A) as otherwise provided in subsection (k) of this section, or (B) when sufficient unit-equivalent points have been created within the municipality during one moratorium to qualify for a subsequent moratorium.

(11) The commissioner shall, within available appropriations, adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection. Such regulations shall specify the procedure to be followed by a municipality to obtain a moratorium, and shall include the manner in which a municipality is to document the units to be counted toward a moratorium. A municipality may apply for a moratorium in accordance with the provisions of this subsection prior to, as well as after, such regulations are adopted.

Sec. 2. (NEW) (a) As used in this section:

(1) "Residential property" means a single parcel of property on

which is situated a single-family residence or a multi-family building in which the owner is an occupant;

(2) "Affordable housing deed restrictions" means deed restrictions filed on the land records of the municipality, containing covenants or restrictions that require such single-family residence or the dwelling units in such multi-family building to be sold or rented only to persons or families whose income is less than or equal to eighty per cent of the area median income or the state median income, whichever is less, and that shall constitute "affordable housing" within the meaning of section 8-39a of the general statutes;

(3) "Long term" means a time period no shorter in duration than the minimum time period for affordability covenants or restrictions in deeds pursuant to subsection (a) of section 8-30g of the general statutes; and

(4) "Binding" means not subject to revocation, either by the owner or a subsequent owner acting unilaterally, or by the owner or a subsequent owner acting jointly with others, until the expiration of the long-term deed restriction time period and enforceable for the duration of the long-term deed restriction time period both by the municipality and by any resident of the municipality.

(b) Any municipality may, by ordinance adopted by its legislative body, provide property tax credits to owners of residential property who place long-term, binding affordable housing deed restrictions on such residential property in accordance with the provisions of this section.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Cost, Potential Savings

Affected Agencies: Department of Economic and Community Development, Judicial Department

Municipal Impact: See Explanation Below

Explanation

State Impact:

This bill as amended makes several changes to the affordable housing appeals procedures that may lead to additional costs for the Department of Economic and Community Development (DECD). The bill as amended requires DECD to adopt new regulations concerning the moratorium on affordable housing appeals as well as requiring the department to certify whether towns meet the criteria necessary to invoke this moratorium. Depending upon the requirements adopted in these new regulations, this certification may require extensive data collection in excess of the department's current efforts. It is expected that the development of the complex regulations, certification and data collection will require up to two full-time equivalent positions. The department is also required to adopt regulations concerning the new affordability guidelines. The new requirements for DECD in this bill as amended may result in additional annual administrative costs of $150,000 to $200,000. The bill as amended also specifies that DECD develop the required regulations within its available appropriations. This does not alter the fiscal impact. No additional appropriations for

this purpose are included in the proposed FY 01 budget revisions.

Section 2 of this bill as amended allows towns to provide property tax credits to homeowners who place long-term, binding deed restrictions on certain properties. As this provision may reduce the number of affordable housing land use decisions that are appealed to the Superior Court, there may be a reduction in the workload for the Judicial Department. Any such reduction is expected to be minimal.

Municipal Impact:

The municipal impact from this is uncertain. The various changes to the affordable housing appeals procedure included in section 1 of the bill as amended may result in a change in the number of towns that are subject to the procedure as well as changes in the number of decisions that are appealed. To the extent that there is a reduction in the number of decisions that any town has appealed, the town could realize savings through reduced administrative and legal costs. However, the overall affect from this bill as amended on the number of appeals cannot be determined at this time.

The bill as amended specifies that DECD's new regulations must include the manner in which each town must document the number of housing units to be counted for the moratorium calculation. To the extent that these regulations include requirements that are in excess of towns' current efforts, the towns may incur additional administrative costs.

Municipalities electing to provide property tax credits to residential property owners under section 2 would experience: 1) a revenue loss 2) a shift in property tax burden to other taxpayers or 3) a combination of both.

Certain municipalities may also realize savings due to this bill as amended. The deed-restricted properties under this bill as amended will count toward the town's affordable housing stock. As such, some towns may increase their affordable housing stock above the 10%

threshold that exempts them from the affordable housing land use appeals procedure. These towns may thus realize administrative savings due to the elimination of a developer's ability to appeal a town decision to the Superior Court.

House "A" made various technical and clarifying changes to the original bill that did not result in any fiscal impact. In addition, House "A" added the provision concerning deed-restricted properties. This provision added potential savings for the Judicial Department and potential savings and revenue loss for the municipalities.

OLR Amended Bill Analysis
sHB 5107 (as amended by House "A")*

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING REGARDING THE AFFORDABLE HOUSING APPEALS PROCEDURE.

SUMMARY:
This bill makes many changes to the affordable housing land use appeals procedure. Under this procedure, towns have the burden of proving certain facts to the court when a developer challenges their decision to reject a proposed affordable housing development. (Normally, this burden falls on the developer.) The procedure is available in towns with little or no affordable housing, as defined by law. Currently, 137 towns fall into this category.

The bill changes one of the factors the Department of Economic and Community Development (DECD) must use when it annually identifies the towns where the procedure can be used. It requires DECD to compute a town's share of affordable units based on its housing stock as of the last U.S. census instead of its current stock.

The bill increases the percent of units developers must agree to make affordable in order to use the procedure and lengthens from 30 to 40 years the time during which they must remain affordable. It also imposes new conditions limiting the amount of rent that developers can charge for the affordable units.

The bill gives local land use commissions more tools to assess proposed affordable housing developments. It requires developers to submit plans showing how they intend to comply with the law's affordability requirements. The DECD commissioner must adopt regulations delineating some of the elements the plans must contain. The bill allows commissions to require developers to submit conceptual site plans if they need a zone change to build an affordable housing development.

It changes several procedural requirements for acting on an application after a developer modifies and resubmits it to the commission that initially acted on it.

The bill specifies that towns must prove to the court that the evidence in the record is sufficient to support their decision to reject a proposed project on the grounds that it was necessary to protect public interests, that those interests outweighed the need for affordable housing, and that the proposed development could not be changed in a way that does not harm those interests.

The bill gives any land use commission that acted on an affordable housing development the same power to enforce the conditions for using the procedure that zoning commissions have to enforce their orders and regulations.

It changes the time period and conditions under which towns can obtain a moratorium on affordable housing appeals. Currently, towns can obtain a one-time, one-year moratorium on affordable housing appeals if they participate in certain state housing programs and create units that equal 1% of their current housing stock. The bill allows towns to obtain a three-year moratorium each time the total number of certain types of housing units equals 2% of the housing stock as of the last census or 75 unit-equivalent points, whichever is greater. It specifies the types of units that count toward a moratorium and assigns points to them. The DECD must adopt regulations specifying how towns can obtain a moratorium and certify whether they qualify for one.

The bill allows towns to adopt ordinances providing property tax credits to residential owners if they agree to sell or rent their property only to low- and moderate-income people at prices they can afford. The owners must impose deeds restricting the sale or rental of the property to these groups for 40 years. These units count toward a moratorium and an exemption from the procedure.

*"House Amendment "A" increases the time period during which units developed under the act must remain affordable to low- and moderate-income people from 30 to 40 years. Originally, the bill increased the period to 30 to 50 years.

The amendment specifies that towns must prove to the court that the evidence in the record meets the statutory standards for satisfying the burden of proof.

The amendment restores a provision in current law requiring commissions to show that protecting substantial public interests clearly outweigh the need for affordable housing. Originally, the bill required the commission to show that these interests clearly outweighed the region's need for affordable housing.

The amendment a statutory procedure for obtaining a moratorium, which towns may use before DECD adopts regulations.

It adds a provision under which towns qualify for additional unit-equivalent points for set-aside developments whose applications were filed before July 6, 1995. And it adds a provision allowing towns to adopt ordinances providing property tax credits.

EFFECTIVE DATE*:* October 1, 2000

DETERMINING IF A TOWN IS SUBJECT TO THE PROCEDURE

Calculating the Percent of Affordable Units

The bill changes one of the factors DECD must use to identify the towns where developers can use the procedure. Under current law, developers can use the procedure in towns where less than 10% of their current housing stock is affordable under the law. DECD annually calculates the percent of affordable units in each town and lists those where developers can use the procedure.

The bill changes the denominator DECD must use to determine if a town's affordable housing stock exceeds the 10% threshold. It requires it to tally the number of affordable units a town currently has and determine if this number exceeds 10% of the total units the town had as of the last 10-year U.S. census. This change freezes the base and theoretically allows the number of affordable units to grow at a faster rate than the other units.

Deed Restricted Units

The bill changes one of criteria for determining if a deed restricted unit

counts towards the 10% threshold. Under current law, the counts toward the 10% if it is subject to a deed restricting its sale or rental to a price a low- and moderate-income family can afford. A family meets this criterion if it earns no more than 80% of area median income and the unit costs them no more than 30% of their income. Under the bill, the unit qualifies if it is affordable to a people earning no more than 80% of the area or the state's median income, whichever is less.

SET-ASIDE DEVELOPMENTS

Unit Set-Aside Requirements

The bill tightens the conditions proposed, privately-financed developments must meet if their developers intend to use the procedure (i.e., "set-aside developments"). The law requires developers to make a portion of the units in these developments affordable to low- and moderate-income people. People fall into this category if they earn no more than 80% of the median income for the area where the housing is located. They can afford the units if they cost them no more than 30% of their income.

The bill requires developers to make these units affordable based on the state's median income if it is less than the area median income. It increases from 25% to 30% the total share of units developers must make affordable to people in the low- and moderate-income range and lengthens the period during which they must remain affordable from 30 to 40 years. Developers must place deeds on these units with provisions restricting their sale or rental to prices these people can afford during the required period.

The law requires developers to reserve a portion of the affordable units for people at the lower end of the income scale (i.e., those earning less than 60% of the area's or state's median income, whichever is less). The bill increases this portion from at least 10% to at least 15%. And they must make that number of units affordable to people at the higher end of the scale needed to reach the bill's minimum 30% unit set-aside requirement. People in this range have incomes ranging from 60% to 80% of the area's or the state's median income, whichever is less.

Limits on Rents for the Set-aside Units

The bill limits the rents developers can charge for the set-aside units to

the fair market rents (FMR) the U.S. Department of Housing and Urban Development calculates for its Section 8 rent subsidy program. The limits are different for the two types of set-aside units.

The bill limits the rents to 100% of the FMR for those units reserved for people earning 60% or less of the median income. And it limits the rents to 120% of the FMR for those people earning between 60% and 80% of the median income. Developers must base the rents on the maximum housing costs that people in these income ranges can afford to pay. That cost cannot exceed 30% of their income. If they do, developers cannot charge rents that exceed the FMR levels the bill specifies.

Housing Cost to Income Ratios

The bill bans developers from imposing housing cost to income ratios that exceed those for federal or state rental assistance programs. This provision applies only to prospective tenants receiving subsidies from these programs. The ratio defines how much income a person can devote to housing and still meet his other needs. Some rental assistance programs subsidize that portion of rent that exceeds 30% of the tenant's housing cost, which consists of several components defined in regulations.

DEVELOPER SUBMISSION REQUIREMENTS

Affordability Plan

The bill requires affordable housing applications to include a plan showing how the developer intends to make the project affordable. This requirement applies to government funded and privately financed set-aside developments.

The affordability plan must contain the following elements:

1. the person, entity, or agency responsible for administering the plan, the income limits, and sales or rental restrictions during the period in which the deed restrictions are effective;

2. an affirmative fair housing marketing plan governing the sale or rental of all units;

3. an example of how the developer intends to calculate the maximum rental or sales prices for the affordable units;

4. the sequence in which the developer intends to build the affordable units and offer them for occupancy and the location of these units within the overall development; and

5. draft zoning regulations, conditions of approvals, deeds, restrictive covenants, or lease provisions that will govern the affordable units.

The bill requires the DECD commissioner to adopt regulations, within available appropriations, regarding the affordability plan specifying:

1. the formula for determining rent levels and sales prices, including the maximum allowable down-payments when calculating maximum allowable sales prices;

2. the costs developers must include when calculating maximum allowed rents and sales prices;

3. how developers must equate family size and bedroom counts in establishing maximum rental and sales for the affordable units; and

4. the factors developers must consider when computing income.

The regulations may include other criteria.

Conceptual Site Plan

The bill allows local land use commissions to adopt regulations under which they can require developers seeking zone changes to submit a conceptual site plan along with their affordable housing application. The plan must indicate the total number of units the developer plans to build, how he intends to arrange them on the site, and the proposed sewage disposal, water supply, and roads and traffic circulation.

APPROVING MODIFIED AFFORDABLE HOUSING APPLICATIONS

The bill changes some of the procedural requirements land use commissions must follow when acting on an affordable housing application after the developer modified and resubmitted it. The law allows a developer to modify and resubmit an application after the

commission rejected or approved the original application with restrictions affecting the development's feasibility. He must do this within the time the law allows for filing an appeal.

The bill specifies that the rule for determining the day when the developer submitted the original application must also determine the day he resubmitted the modified application.

The bill also changes the conditions under which the commission must hold a public hearing on the modified application. Current law allows the commission to hold the hearing, but the bill requires it to do so if it held one on the original application.

The bill requires the commission to render a decision on the modified application not later than 65 days, rather than 45 days after receiving it. But it automatically adds 35 days if the applicant needs a wetlands permit and the commission's deadline expires before the 35 days the wetland agency has to issue the permit. The bill also makes a conforming technical change.

BURDEN OF PROOF

Scope of review

Current law places the burden on the commission to show that:

1. the record contains sufficient evidence to support the decision;

2. the decision was necessary to protect substantial public interests in health, safety, or other matters the commission may legally consider;

3. these interests clearly outweigh the need for affordable housing; and

4. the interests cannot be protected by making reasonable changes to the proposed development (see BACKGROUND).

The bill makes it clear after the court determines that there is sufficient evidence in the record to support the commission's decision, the commission must then show that that evidence supports its decision with respect to the second, third, and fourth standard above.

ZONING ENFORCEMENT

The bill appears to give all land use commissions or their designated authorities the power to force developers to comply with the terms and conditions governing affordable housing developments. It does this by giving them the same powers and remedies that zoning commissions already have to enforce their regulations.

The remedies include fines for violating zoning regulations and civil penalties for failing to comply with cease and desist orders. The fines range from $10 to $100 for each day a violation continues and from $100 to $250 per day, imprisonment for up to 10 days, or both if willful. The civil penalties can be up to $2,500 for failing to comply with a cease and desist order.

MORATORIA

Time Period

The bill changes the time period, frequency, and conditions under which towns can obtain a moratorium on affordable housing appeals. Current law allows towns to obtain a one-time, one-year moratorium on these appeals. The bill instead allows towns to obtain a three-year moratorium each time they meet the bill's requirements for obtaining a moratorium.

Affected Projects

The bill imposes the moratorium on affordable housing appeals for applications that were filed with a commission after the moratorium took effect. But developers who submitted applications before it took effect can still use the procedure if the commission subsequently rejects their applications. Developers who submit applications after the moratorium took effect can still appeal decisions under the conventional procedure, which requires them to bear the burden of proof.

The bill exempts from the moratorium applications for a proposed development that receive government funds. In these situations, the developer can use the procedure during the moratorium if:

1. 95% of the units in the proposed development are restricted to people or families earning 60% or less of the median income or

2. the development contains 40 or fewer units, regardless of whether of any income restriction applies.

Moratoria under the current law apply to all affordable housing applications.

Requirement for Obtaining a Moratorium

A town qualifies for a moratorium under the bill each time it adds certain types of units equal to 2% of the total number of units it had as of the last 10-year census or 75 unit-equivalent points, whichever is greater. (As discussed below, a unit-equivalent point is the value that the bill assigns to certain types of units.) The town qualifies for a moratorium under current law if it adds certain types of units equal to 1% of its current housing stock and it actively participates in certain state housing programs.

Eligible Units

The bill expands the range of units that must be added in a town before it qualifies for a moratorium. And it weights some of these units (i.e., unit-equivalent points). Under current law, a town qualifies for a moratorium only for units that were added under the Connecticut Housing Partnership and Regional Fair Housing Compact programs, which are no longer active.

Under the bill, units that became affordable July 1, 1990 count toward a moratorium if they were:

1. constructed with government funds,

2. constructed with private funds and occupied by tenants receiving state or federal rent subsidies, and

3. subject to deeds restricting their sale or rental to low- and moderate-income people for at least 40 years, and

4. developed under the appeals procedure (including both deed-restricted and market rate units).

The town cannot count a unit toward a moratorium until it receives its certificate of occupancy or the deed restrictions take effect.

The bill weights those units based on their tenancy and level of affordability. The weights apply to privately financed developments completed under the procedure and government funded new construction. Table 1 shows the weights the bill assigns to these units.

Table 1: Housing Unit-Equivalent Point Schedule

Type of Unit	*Points*
Market-rate units in a set-aside development	0.25
Family* ownership units affordable to people at or below 80% of median income	1.00
Family ownership units affordable to people at or below 60% of median income	1.50
Family ownership units affordable to people at or below 40% of median income	2.00
Family rental units affordable to people at or below 80% of median income	1.50
Family rental units affordable to people at or below 60% of median income	2.00
Family rental units affordable to people at or below 40% of median income	2.50
Units affordable to elderly people at or below 80% of median income	0.50

*Family units are those for without age restrictions.

The bill gives towns additional unit points for set-aside developments containing rental units for families if their applications were filed with the commission before July 6, 1995. The additional points equal 22% of the total number of unit-equivalent points the town received for the project.

Towns must tally the number of units that count toward a moratorium and deduct those that are no longer affordable because of its actions. It is not clear if these units include those lost because of the actions of towns' housing authorities, which are quasi-public agencies with limited ties to the towns.

Units count toward a subsequent moratorium if they were included in an affordable housing development that was proposed before the moratorium took effect and completed during the moratorium period. The units must still meet the certificate of occupancy or deed restriction requirements before the town can count them toward the subsequent moratorium.

Applying for a Moratorium

The bill requires the DECD commissioner to adopt regulations, within available appropriations, specifying the process towns must follow to obtain a moratorium. The regulations must also specify the method towns must use to document the units they count toward a moratorium.

The bill also provides a procedure towns can follow before DECD adopts the regulations. Towns can apply to the commissioner for a certificate of affordable housing completion, providing documentation showing that they have obtained the required number of points during the applicable time period. The documentation must indicate the location of each unit, the number of points assigned to it, and how the town calculated that number.

The commissioner must publish a notice in the *Connecticut Law Journal* after he receives the application advising the public that it has 30 days to comment on the application. He must approve or reject the application within 90 days after receiving it. In either case, the commissioner must state in writing the reasons for his decision. He must publish a certificate of affordable housing completion in the *Journal* if he approves the application.

The application is provisionally approved if the commissioner failed to act on it within the 90-day period. The town can publish a notice of provisional approval in a conspicuous manner in a local newspaper, stating that the moratorium takes effect on the publication date. It must send a copy of the notice to the commissioner. The moratorium ends if the commissioner subsequently rejects the application and notifies the town to that effect.

The commissioner must certify whether a town meets the conditions for imposing a moratorium on affordable housing appeals. If it has, he must publish a notice to that effect in the *Connecticut Law Journal*.

The moratorium period begins on the day the commissioner publishes the notice or the town publishes a notice of provisional approval.

PROPERTY TAX CREDITS FOR DEED-RESTRICTED UNITS

Eligibility Requirements

The bill allows towns to adopt ordinances providing property tax

credits to residential property owners who agree to file a deed in the land record containing covenants that restrict the property's sale or rental to low- and moderate-income people at prices they can afford. The restriction must remain in place for 40 years. Towns can give the credits to single-family homeowners and multifamily homeowners who occupy one of the units. These units count toward a moratorium and the 10% threshold a town must meet to be exempted from the procedure.

The covenants must bind the owner and subsequent owners from acting either unilaterally or with others to remove the restrictions during the period. The town or any of its residents must be able to enforce the restrictions during the period.

Affordability Requirements

The deed-restricted units must be affordable to people who earn no more than 80% of the area or the state's median income, whichever is less. They can afford a unit if its annual costs do not exceed 30% of their income.

BACKGROUND

Related Case Regarding the Scope of Review

Connecticut Supreme Court ruled that the standard for sufficient evidence in the record sets the scope that courts must apply to the other standards. In other words, courts must review the record and determine if there is sufficient evidence to support the commission's decision regarding the second, third, and fourth standard. Courts do not weigh the evidence in the record to determine if they would have independently reached the same conclusion as the commission (*Christian Activities Council, Congregational v. Town Council of Glastonbury et al*. 249 Conn. 566 (1999)).

Related Bills

sSB 147 (File 254) contains identical provisions for property tax credits to residential owners who agree to sell or rent their property only to low- and moderate-income people at prices they can afford.

sHB 5427 (File 442) modifies the second set of criteria towns have to meet to defeat an affordable housing appeals. It allows some residential uses in industrial zones that ban these uses without the town jeopardizing its ability to meet the burden of proof. The Judiciary Committee favorably reported this bill to the floor on March 20.

Legislative History

On April 10, the House referred the original version of the bill to the Appropriations Committee, which favorably reported it on April 12. On April 13, the House referred the bill to the Commerce Committee, which favorably reported it on April 18.

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Substitute Change of Reference
Yea 11 Nay 0

Planning and Development Committee

Joint Favorable Change of Reference
Yea 14 Nay 2

Judiciary Committee

Joint Favorable Report
Yea 38 Nay 2

Appropriations Committee

Joint Favorable Report
Yea 28 Nay 10

Commerce Committee

Joint Favorable Report
Yea 22 Nay 5